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MUNICIPAL PLANNING AND SUBDIVISION LEGISLATION

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CHAPTER 41
GENERAL LAWS

JULY 1976

Commonwealth of Massachusetts

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The Commonwealth of Massachusetts
Department of Community Affairs
1 Ashburton Place 18th Floor Room 1813
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July, 1976

The Department of Community Affairs was established on November 1, 1968, under the provisions of Chapter 761 of the Acts of 1968, now Chapter 23B of the Massachusetts General Laws.

Chapter 23B mandates the Department to provide assistance to communities in solving local problems including, but not limited to, problems in planning, zoning, housing and development.

Pursuant to this duty, one of the functions of the Department is to provide a wide range of technical assistance and information services to municipal governments so as to assist communities in solving local problems. The Department is pleased to offer for the use of planning boards, municipal officials and other interested persons this edition of the "Municipal Planning and Subdivision Control Legislation." Additional copies of this publication are available on request.

This publication of the planning and subdivision control legislation is somewhat different than past issues. We have eliminated the listing of amendments subsequent to Chapter 674 of the Act of 1953 as such listing tended to confuse the reader. Also, certain annotations have been changed to emphasize planning board limitations under the subdivision control law.

Correspondence concerning this publication should be addressed to the Office of Local Assistance. Questions will also be answered by telephone at (617) 727-3197 or on our toll free line at 800-392-6445.

Sincerely,

William G. Flynn

William G. Flynn
Secretary
Executive Office of Communities
and Development

WGF:bb

AN EQUAL OPPORTUNITY EMPLOYER

MUNICIPAL PLANNING

AND

SUBDIVISION LEGISLATION

CHAPTER 41, GENERAL LAWS

JULY, 1976

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Subdivision Control Procedure (graphic insert)

IMPROVED METHOD OF MUNICIPAL PLANNING

St. 1947, c. 340, s. 4, amended this chapter by striking out sections 81A to 81J, inclusive, which had been added by St. 1936, c. 211, s. 4, as amended by St. 1938, c. 113, and inserting in place thereof, under the same caption, 25 new sections which constituted sections 81A-81Y prior to the amendment of this chapter by St. 1953, c. 674, s. 7.

*PLANNING BOARDS

Establishment of Board

5 to 9 Members Cities - Appoint

Towns - Elect or Appoint

Temporary Retention of Members of Existing Board in Towns

Overlapping Terms

Three or Five-Year Terms

Removal

Vacancies

Procedure

*Headings in this column on each page are not part of this law, but have been inserted to facilitate research.

Section 81-A. Any city except Boston, and, except as hereinafter provided, any town may at any time establish a planning board hereunder. Every town not having any planning board shall, upon attaining a population of ten thousand, so establish a planning board under this section. A planning board established hereunder shall consist of not less than five nor more than nine members. Such members shall in cities be appointed by the mayor, subject to confirmation by the city council and in towns be elected at the annual town meeting or be appointed in such manner as an annual town meeting may determine; provided, that a town which has a planning board established under section seventy may, at an annual town meeting or at a special town meeting called for the purpose, vote to establish a planning board under this section and may provide that the members of the planning board then in office shall serve as members of the planning board under this section until the next annual town meeting. When a planning board is first established or when the terms of members of the planning board established under section seventy serving as members of the planning board under this section expire, as the case may be, the members of the planning board under this section shall be elected or appointed for terms of such length and so arranged that the term of at least one member will expire each year, and their successors shall be elected or appointed for terms of three or five years each as determined by the city council in the case of a city and by the town meeting in the case of a town. Any member of a board so established in a city may be removed for cause, after a public hearing, by the mayor, with the approval of the city council. A vacancy occurring otherwise than by expiration of term shall be filled for the unexpired term, in a city, in the same manner as an original appointment, and, in a town, if the members of the board are appointed, in the same manner as an original appointment and, if they are elected, in the manner provided in section eleven. Such a board shall elect annually a chairman and a clerk from among its own number, and may employ experts and clerical and other assistants. It may appoint a custodian of its plan and records, who may be the city engineer or town clerk. No member of a planning board shall represent before such

board any party of interest in any matter pending before it.

Selectmen as Planning Board

Towns of less than ten thousand inhabitants, having no planning board established under this section may, by vote of the town meeting, authorize the board of selectmen to act as a planning board under this section until such a board is established; provided, that any such town, upon attaining a population of ten thousand, shall establish a planning board hereunder.

POWERS AND DUTIES OF PLANNING BOARDS

Section 81-B. In any city or town in which a planning board is established under section eighty-one A, if any of the powers and duties of planning boards or boards of survey are being exercised and performed by a planning board established under section seventy or corresponding provisions of earlier laws, or by a board of survey established under section seventy-three or corresponding provisions of earlier laws or by a special act, or by the board of selectmen acting as a planning board, or by any other board, all such powers and duties shall cease to exist, when the members of the planning board established in such city or town under section eighty-one A take office; and

Automatic Discontinuance of Old Boards

Automatic Transfer of Powers and Duties from Old Boards to New

thereupon the planning board established therein under section eighty-one A shall have and exercise all the powers and duties theretofore conferred and imposed by general law upon planning boards and boards of survey in cities and towns, as the case may be, and all the powers and duties of any such board theretofore conferred and imposed by special law upon any board of the city or town, with respect to any matters pending before any of said boards at the time of the establishment of the planning board in such city or town under section eighty-one A, as well as the powers imposed by this section and sections eighty-one C to eighty-one GG, inclusive. The officer or person having custody of the records or plans, or both, of the former board shall turn them over to the officer or person entitled to custody of the records and plans of the planning board established under section eighty-one A.

Transfer of Records

Enforcement 81-A to 81-J

Planning boards established under section eighty-one A, their officers and agents, may, so far as they deem it necessary in carrying out sections eighty-one A to eighty-one J, inclusive, enter upon any lands and there make examinations and surveys, and place and maintain monuments and marks; but any person injured in his property by such entry or other acts without his consent may recover the damages so caused under chapter seventy-nine. The superior court for the county in

Entry on Private Land Monuments and Marks

Enforcement by Court of Equity

which the land affected by any of the provisions of sections eighty-one A to eighty-one J, inclusive, lies, sitting in equity, shall have jurisdiction on petition of a planning board established under section eighty-one A, to enforce any of the provisions of said sections, and any ordinances or by-laws made thereunder, and may restrain by injunction violations thereof.

STUDIES AND REPORTS OF PLANNING BOARDS

Section 81-C. The planning board established under section eighty-one A shall from time to time make careful studies and when necessary prepare plans of the resources, possibilities and needs of the city or town, and, upon the completion of any such study, shall submit to the city council or selectmen a report thereon, with its recommendations. A copy of each completed study shall be furnished to the division of community services of the department of community affairs. Said planning board shall report annually to the city council or to the annual town meeting, giving information regarding the condition of the city or town and any plans or proposals for its development and estimates of the cost thereof, and shall at the same time furnish a copy of its report to the division of community services of the department of community affairs. The planning board of a town established under section eighty-one A may be authorized by vote of a town meeting to act as park commissioners therein, and may be vested with all the powers and duties of park commissioners in towns.

Copies of Studies to DCA

Annual Report to City Council and Town Meeting

Board as Park Commissioners in Towns

MASTER OR STUDY PLAN

Section 81-D. A planning board established in any city or town under section eighty-one A shall make a master or study plan of such city or town or such part or parts thereof as said board may deem advisable and from time to time may extend or perfect such plan. Such plan shall show, among other things, existing and desirable proposed public ways, street grades, public places, bridges and tunnels, viaducts, parks, parkways, playgrounds, sites for public buildings and structures, building and zoning districts, pierhead and bulkhead lines, waterways, routes of railroads, buses and ferries, and locations of sewers, water conduits and other public utilities, and other pertinent features of such a plan, including existing private ways. Such planning board, after consultation with the municipal agencies charged with enforcing housing laws, ordinances, by-laws or regulations, and with the local housing or redevelopment authority, if any, shall designate in such plan, conservation, rehabilitation and redevelopment areas for the purpose of guiding residential protection, neighborhood improvement, and urban renewal programs. Such plan shall be made, and may be added to or changed from time to time, by a majority vote of such planning board and shall be a public record. The planning board shall, upon completion of any study plan or report, or any change or amendment to a study plan or report

Contents

Changes

lines and notations showing existing or proposed locations, not theretofore mapped, of new or widened public ways and new or enlarged parks, and proposed discontinuances in whole or in part of existing or

Public Hearing

mapped public ways and parks. No such change or addition shall become effective until after a public hearing in relation thereto before the city council or a committee thereof or before the selectmen, at which parties in interest shall have an opportunity to be heard. At

Notice

least ten days' notice of such a public hearing shall be given by advertisement in an official publication of, or in a newspaper of general circulation in, the city or town and by mailing a copy of such advertisement to all owners of property abutting on such proposed improvement or discontinuance, as appearing upon the most recent tax list. Any way, which is not a public way, appearing on an official map of a city or town may be modified or removed therefrom by the planning board acting in accordance with the procedure set forth in section eighty-one W, so far as apt, provided that there is no objection at a public hearing by any person in interest. No such change or addition which has not been previously recommended by the planning board established under section eighty-one A shall be adopted until after a report thereon by said board, and no variance from a plan prepared or approved by said planning board shall be made except by a two thirds vote of all the members of a city council, or by a two thirds vote of a town meeting; provided, that the last mentioned requirement shall be deemed to be waived in case the matter has been referred to said board for a report and it has failed to

Recovery of Damages

report within thirty days thereafter. Any person injured in his property by a change in the official map under this section may recover the damages so caused under chapter seventy-nine.

OFFICIAL MAP
Powers of Legislative Body not Abridged

Section 81-G. Sections eighty-one A to eighty-one J, inclusive, shall not abridge the powers of the city council or the selectmen or any other municipal officer in regard to public ways or parks in any manner except as provided therein, nor shall they authorize the taking of land or the laying out or construction of any way or park shown on a map or plan, or the alteration, relocation or discontinuance thereof, except in accordance with the laws

Alteration, Relocation or Discontinuance of Ways

governing the same; provided, that, after a city or town has adopted an official map under section eighty-one E, no public way shall be laid out, altered, relocated or discontinued if such laying out, alteration, relocation or discontinuance is not in accordance with such official map as it then appears, unless the proposed laying out, alteration, relocation or discontinuance has been referred to the planning board established under section eighty-one A, and such board has reported thereon, or has allowed forty-five days to elapse after such reference, without

Opening of Ways to Public Use

submitting its report. After a city or town has adopted an official map under section eighty-one E, no person shall open a way for public use, except as provided in the subdivision control law, unless the location of such way is in accordance with such official map as it then appears, or has been approved by the planning board under the provisions of this section, and in either case, the grading, surfacing and drainage of such way has been approved by such board. Nothing in said sections shall render a city or town liable for damages, except such as may be sustained by entry upon land and other acts under section eighty-one B, by reason of changes in an official map under section eighty-one F, or by reason of the establishment of exterior lines under section eighty-one J.

City or Town not Liable Exceptions

OFFICIAL MAP: Inclusion of New or Altered Public Ways and Parks on Map

Section 81-H. Upon final action by the proper authorities in laying out, altering or relocating a public way, or in discontinuing the whole or any part thereof, or in establishing or enlarging a public park, or closing thereof in whole or in part, the lines and notations showing such improvement, discontinuance or closing, as so established or effected, shall, without further action by the city council or the town meeting, be made a part of the official map, if any, of the city or town in which such public way or park is located.

DUTIES OF MUNICIPALITIES HAVING NO OFFICIAL MAP

Section 81-I. In a city or town having a planning board established under section eighty-one A but which has not adopted an official map no public way shall be laid out, altered, relocated or discontinued, unless the proposed laying out, alteration, relocation or discontinuance has been referred to the planning board of such city or town and such board has reported thereon, or has allowed forty-five days to elapse after such reference without submitting its report. Any city or town having a planning board established under section eighty-one A may, by ordinance, by-law or vote, provide for the reference of any other matter or class of matters to the planning board before final action thereon, with or without provision that final action shall not be taken until the planning board has submitted its report or has had a reasonable fixed time to submit such report. Such planning board shall have full power to make such investigations, maps and reports, and recommendations in connection therewith, relating to any of the subjects referred to it under this section, as it deems desirable.

Referral of Changes in Public Ways to Board

Referral of Other Matters to Board for Report

EXTERIOR LINES OF CERTAIN PUBLIC WAYS Establishment

Section 81-J. A city or town which has a planning board under section eighty-one A may establish, in the manner provided for the laying out of city or town ways, the exterior lines of any way, the location of which has been approved under section eighty-one G or the subdivision control law; and thereafter no structure shall be erected or maintained between the exterior lines so established, except that buildings or parts of buildings existing at

Regulation of Buildings and Structures within Lines

the time of the establishment of said lines may remain and be maintained to such extent and under such conditions as may be prescribed by such planning board. Lines

Discontinuance

established under this section may be discontinued in the manner provided for the discontinuance of a highway or a city or town way. Lines so established shall be placed on the official map, if any, of the city or town, without further action by the city council or town meeting, and shall be removed therefrom if discontinued.

Damages

Any person injured in his property by the establishment of exterior lines under this section may recover damages so caused under chapter seventy-nine.

SUBDIVISION CONTROL

St. 1953, c. 674, s. 7, amended this chapter by striking out sections 81K to 81Y, inclusive, as added by St. 1947, c. 340, s. 4, as amended by St. 1949, c. 182, s. 1 and s. 2, and St. 1950, c. 50, and inserting in place thereof, under this caption, 23 sections, now constituting sections 81K-81Z, 81AA-81GG, inclusive.

SUBDIVISION CONTROL

Section 81-K. Sections eighty-one K to eighty-one GG, inclusive, shall be designated and may be known as "the subdivision control law". This designation shall, when apt, include corresponding provisions of earlier laws.

DEFINITIONS

Section 81-L. In construing the subdivision control law, the following words shall have the following meaning, unless a contrary intention clearly appears:--

Applicant

"Applicant" shall include an owner or his agent or representative, or his assigns.

Certified

"Certified by (or endorsed by) a planning board", as applied to a plan or other instrument required or authorized by the subdivision control law to be recorded, shall mean bearing a certification or endorsement signed by a majority of the members of a planning board, or by its chairman or clerk or any other person authorized by it to certify or endorse its approval or other action and named in a written statement to the register of deeds and recorder of the land court, signed by a majority of the board.

Lot

"Lot" shall mean an area of land in one ownership, with definite boundaries, used, or available for use, as the site of one or more buildings.

Municipal Service

"Municipal service" shall mean public utilities furnished by the city or town in which a subdivision is located, such as water, sewerage, gas and electricity.

Planning Board

"Planning board" shall mean a planning board established under section eighty-one A, or a board of selectmen acting as a planning board under said section, or a board of survey in a city or town which has accepted the provisions of the subdivision control law as provided in section eighty-one N or corresponding provisions of earlier laws, or has been established by special law with powers of subdivision control.

Preliminary Plan

Planning Board cannot require an applicant to submit more information than is contained in the definition of a Preliminary Plan

"Preliminary plan" shall mean a plan of a proposed subdivision or resubdivision of land drawn on tracing paper, or a print thereof, showing (a) the subdivision name, boundaries, north point, date, scale, legend and title "Preliminary Plan"; (b) the names of the record owner and the applicant and the name of the designer, engineer or surveyor; (c) the names of all abutters, as determined from the most recent local tax list; (d) the existing and proposed lines of streets, ways, easements and any public areas within the subdivision in a general manner; (e) the proposed system of drainage, including adjacent existing natural waterways, in a general manner; (f) the approximate boundary lines of proposed lots, with approximate areas and dimensions; (g) the names, approximate location and widths of adjacent streets; (h) and the topography of the land in a general manner.

Recorded

"Recorded" shall mean recorded in the registry of deeds of the county or district in which the land in question is situated, except that, as affecting registered land, it shall mean filed with the recorder of the land court.

Register of Deeds

"Register of deeds" shall mean the register of deeds of the county or district in which the land in question, or the city or town in question, is situated, and, when appropriate, shall include the recorder of the land court.

Registered Mail

"Registered mail" shall mean registered or certified mail.

Registry of Deeds

"Registry of deeds" shall mean the registry of deeds of the county or district in which the land in question is situated, and, when appropriate, shall include the land court.

Subdivision

"Subdivision" shall mean the division of a tract of land into two or more lots and shall include resubdivision, and, when appropriate to the context, shall relate to the process of subdivision or the land or territory subdivided; provided, however, that the division of a tract of land into two or more lots shall not be deemed to constitute a subdivision within the meaning of the subdivision control law if, at the time when it is made, every lot within the tract so divided has frontage on (a) a public way or a way which the clerk of the city or town certifies is maintained and used as a public way, or (b) a way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law, or (c) a way in existence when the subdivision control law became effective in the city or town in which the land lies, having, in the opinion of the planning board, sufficient width, suitable grades and adequate

construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon. Such frontage shall be of at least such distance as is then required by zoning or other ordinance or by-law, if any, of said city or town for erection of a building on such lot, and if no distance is so required, such frontage shall be of at least twenty feet. Conveyances or other instruments adding to, taking away from, or changing the size and shape of, lots in such a manner as not to leave any lot so affected without the frontage above set forth, or the division of a tract of land on which two or more buildings were standing when the subdivision control law went into effect in the city or town in which the land lies into separate lots on each of which one of such buildings remains standing, shall not constitute a subdivision.

Subdivision Control

"Subdivision control" shall mean the power of regulating the subdivision of land granted by the subdivision control law.

PURPOSE OF SUBDIVISION CONTROL LAW

Section 81-M. The subdivision control law has been enacted for the purpose of protecting the safety, convenience and welfare of the inhabitants of the cities and towns in which it is, or may hereafter be, put in effect by regulating the laying out and construction of ways in subdivisions providing access to the several lots therein, but which have not become public ways, and ensuring sanitary conditions in subdivisions and in proper cases parks and open areas. The powers of a planning board and of a board of appeal under the subdivision control law shall be exercised with due regard for the provision of adequate access to all of the lots in a subdivision by ways that will be safe and convenient for travel; for lessening congestion in such ways and in the adjacent public ways; for reducing danger to life and limb in the operation of motor vehicles; for securing safety in the case of fire, flood, panic and other emergencies; for insuring compliance with the applicable zoning ordinances or by-laws; for securing adequate provision for water, sewerage, drainage, underground utility services, fire, police, and other similar municipal equipment, and street lighting and other requirements where necessary in a subdivision; and for coordinating the ways in a subdivision with each other and with the public ways in the city or town in which it is located and with the ways in neighboring subdivisions. It is the intent of the subdivision control law that any subdivision plan filed with the planning board shall receive the approval of such board if said plan conforms to the recommendation of the board of health and to the reasonable rules and regulations of the planning board pertaining to

Powers of Planning Boards shall be Exercised with due Regard for the Provision of Access to Lots in a Subdivision

subdivisions of land; provided, however, that such board may, when appropriate, waive, as provided for in section eighty-one R, such portions of the rules and regulations as is deemed advisable.

EXTENT AND ACCEPTANCE OF SUBDIVISION CONTROL

If Planning Board Established prior to January 1, 1954

If Planning Board Established after January 1, 1954, and Subdivision Control Law not Rejected

Later Acceptance

Subdivision Control by Board of Survey

Notice to Register of Deeds and Recorder of Land Court

Vote

Section 81-N. Except as provided in section eighty-one EE, the subdivision control law shall be in effect in every city, except Boston, and every town, which prior to the first day of January, nineteen hundred and fifty-four, established a planning board as defined in section eighty-one L, or which after said date establishes a planning board under section eighty-one A unless such city or town by vote of its city council or town meeting at the time of establishment of such board shall vote not to accept the provisions of the subdivision control law. Any such city or town which shall have voted not to accept such provisions may thereafter accept such provisions in the manner provided in section four of chapter four, and any city or town having a board of survey, however established, may accept such provisions in such manner, and the subdivision control law shall be similarly in effect in such cities and towns. In any city or town which has not established a planning board under section eighty-one A, but which has a board of survey, however established, and has prior to the first day of January, nineteen hundred and fifty-four, accepted corresponding provisions of the subdivision control law, or shall after said date accept the provisions of the subdivision control law in such manner, the board of survey shall have all the powers and be subject to all the duties of a planning board relating to subdivision control. In every city and town in which the subdivision control law is in effect the provisions of sections eighty-one K to eighty-one GG, as the same may from time to time be in force, shall, notwithstanding any contrary or inconsistent provision of any general or special law, apply in such city or town irrespective of whether the board having such powers is established under section eighty-one A or under any other general or special law. The subdivision control law, however, shall not become effective in any city or town in which it was not in effect on the first day of January, nineteen hundred and fifty-four, until the planning board of such city or town shall have notified the register of deeds and the recorder of the land court that the city or town has accepted the provisions of the subdivision control law and that the planning board has adopted its rules and regulations as provided in section eighty-one Q and shall have furnished the said register and recorder with a copy of the vote of the city council or town meeting under which the provisions of the subdivision control law were accepted in such city or town, certified by the city or town clerk, and a copy of such rules and regulations certified by said clerk.

REGULATION OF NEW SUBDIVISIONS

Lots
Ways

Planning Board Approval

Amendments

Change in Number, Shape and Size of Lots

Section 81-O. No person shall make a subdivision of any land in any city or town in which the subdivision control law is in effect unless he has first submitted to the planning board of such city or town for its approval a plan of such proposed subdivision, showing the lots into which such land is to be divided and the ways already existing or which are to be provided by him for furnishing access to such lots, and the planning board has approved such plan in the manner hereinafter provided. After the approval of a plan the location and width of ways shown thereon shall not be changed unless the plan is amended accordingly as provided in section eighty-one W; but the number, shape and size of the lots shown on a plan so approved may, from time to time, be changed without action by the board, provided every lot so changed still has frontage on a public way or way shown on a plan approved in accordance with the subdivision control law of at least such distance, if any, as is then required by ordinance or by-law of said city or town for erection of a building on such lot, and if no distance is so required, has such frontage of at least twenty feet.

Plan Deemed Submitted When Delivered or Sent by Registered Mail to the Planning Board

A plan shall be submitted under this section when delivered at a meeting of the board or when sent by registered mail to the planning board, care of the city or town clerk. If so mailed, the date of mailing shall be the date of submission of the plan.

APPROVAL OF PLANS NOT SUBJECT TO SUBDIVISION CONTROL LAW

Procedure

Endorsement Within 14 Days

If Approval Required, Notice to Clerk and Applicant within 14 Days

Appeal

Failure to Act Deemed Approval

Section 81-P. Any person wishing to cause to be recorded a plan of land situated in a city or town in which the subdivision control law is in effect, who believes that his plan does not require approval under the subdivision control law, may submit his plan to the planning board of such city or town in the manner prescribed in section eighty-one T, and, if the board finds that the plan does not require such approval, it shall forthwith, without a public hearing, endorse thereon or cause to be endorsed thereon by a person authorized by it the words "approval under the subdivision control law not required" or words of similar import with appropriate name or names signed thereto, and such endorsement shall be conclusive on all persons. Such endorsement shall not be withheld unless such plan shows a subdivision. If the board shall determine that in its opinion the plan requires approval, it shall within fourteen days of such submittal, give written notice of its determination to the clerk of the city or town and the person submitting the plan, and such person may submit his plan for approval as provided by law and the rules and regulations of the board, or he may appeal from the determination of the board in the manner provided in section eighty-one BB. If the board fails to act upon a plan submitted under this section or fails to notify the clerk of the city or town and the

If Plan has Required Frontage, (See Definition of Subdivision)Board must Endorse as Approval Not Required

person submitting the plan of its action within fourteen days after its submission, it shall be deemed to have determined that approval under the subdivision control law is not required, and it shall forthwith make such endorsement on said plan, and on its failure to do so forthwith the city or town clerk shall issue a certificate to the same effect. The plan bearing such endorsement or the plan and such certificate, as the case may be, shall be delivered by the planning board, or in case of the certificate, by the city or town clerk, to the person submitting such plan.

Signature of Other Than Majority of Board

The planning board of a city or town which has authorized any person, other than a majority of the board, to endorse on a plan the approval of the board or to make any other certificate under the subdivision control law, shall transmit a written statement to the register of deeds and the recorder of the land court, signed by a majority of the board, giving the name of the person so authorized.

Statement to Register of Deeds and Recorder of Land Court

The endorsement under this section may include a statement of the reason approval is not required.

PLANNING BOARD RULES AND REGULATIONS

Section 81-Q. After a public hearing, notice of the time and place of which, and of the subject matter, sufficient for identification, shall be published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the hearing or if there is no such newspaper in such city or town then by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days

Public Hearing and Notice

Adoption and Amendment

before the day of such hearing, a planning board shall adopt, and, in the same manner, may, from time to time, amend, reasonable rules and regulations relative to subdivision control not inconsistent with the subdivision control law or with any other provisions of a statute or of any valid ordinance or by-law of the city or town. Such rules and regulations may prescribe the size, form, contents, style and number of copies of plans and the procedure for the submission and approval thereof, and shall be such as to enable the person submitting the plan to comply with the requirements of the register of deeds for the recording of the same, and to assure the board of a copy for its files; and shall set forth the requirements of the board with respect to the location, construction, width and grades of the proposed ways shown on a plan and the installation of municipal services therein, which requirements shall be established in such manner as to carry out the purposes of the subdivision control law as set forth in section eighty-one M. Such rules and regulations shall not require referral of a subdivision plan to any other board or person prior to its submission to the planning board. In establishing such requirements regarding ways, due regard shall be paid to the prospective character of different subdivisions,

Rules Cannot be Inconsistent with Subdivision Control Law

Rules Relative to:

Submission and Approval

Proposed Ways

Municipal Services

No Prior Referral to Other Board

Turnaround

Termination of Easement in Turnaround

Underground Distribution Systems

No Regulation of Lots Except to Require Compliance with Applicable Zoning Requirements

The Requirement of the Dedication of Land to Public Use Without Just Compensation Prohibited

One Dwelling Per Lot

Rules and Regulations on File:
Planning Board

City or Town Clerk

Copy of Rules and Amendments to Register of Deeds and Recorder of Land Court

whether open residence, dense residence, business or industrial, and the prospective amount of travel upon the various ways therein, and to adjustment of the requirements accordingly. Such rules and regulations may set forth a requirement that a turnaround be provided at the end of the approved portion of a way which does not connect with another way. Any easement in any turnaround shown on a plan approved under the subdivision control law which arises after January first, nineteen hundred and sixty, other than an easement appurtenant to a lot abutting the turnaround, shall terminate upon the approval and recording of a plan showing extension of said way, except in such portion of said turnaround as is included in said extension, and the recording of a certificate by the planning board of the construction of such extension. Such rules and regulations may set forth a requirement that underground distribution systems be provided for any and all utility services, including electrical and telephone services, as may be specified in such rules and regulations, and may set forth a requirement that poles and any associated overhead structures, of a design approved by the planning board, be provided for use for police and fire alarm boxes and any similar municipal equipment and for use for street lighting.. Except in so far as it may require compliance with the requirements of existing zoning ordinances or by-laws, no rule or regulation shall relate to the size, shape, width, frontage or use of lots within a subdivision, or to the buildings which may be constructed thereon, or shall be inconsistent with the regulations and requirements of any other municipal board acting within its jurisdiction. No rule or regulation shall require, and no planning board shall impose, as a condition for the approval of a plan of a subdivision, that any of the land within said subdivision be dedicated to the public use, or conveyed or released to the commonwealth or to the county, city or town in which the subdivision is located, for use as a public way, public park or playground, or for any other public purpose, without just compensation to the owner thereof. The rules and regulations may, however, provide that not more than one building designed or available for use for dwelling purposes shall be erected or placed or converted to use as such on any lot in a subdivision, or elsewhere in the city or town, without the consent of the planning board, and that such consent may be conditional upon the providing of adequate ways furnishing access to each site for such building, in the same manner as otherwise required for lots within a subdivision. A true copy of the rules and regulations, with their most recent amendments, shall be kept on file available for inspection in the office of the planning board of the city or town by which they were adopted, and in the office of the clerk of such city or town. A copy certified by such clerk of any such rules and regulations, or any amendment thereof, adopted after the first day of January, nineteen hundred and fifty-four shall be transmitted forthwith by such planning board to the register of deeds

and recorder of the land court, and no rule or regulation, or amendment thereof, adopted thereafter, under this section shall be effective until certified copies thereof have been so transmitted. Once a definitive plan has been submitted to a planning board, and written notice has been given to the city or town clerk pursuant to section eighty-one T and until final action has been taken thereon by the planning board or the time for such action prescribed by section eighty-one U has elapsed, the rules and regulations governing such plan shall be those in effect relative to subdivision control at the time of the submission of such plan. When a preliminary plan referred to in section eighty-one S has been submitted to a planning board, and written notice of the submission of such plan has been given to the city or town clerk, such preliminary plan and the definitive plan evolved therefrom shall be governed by the rules and regulations relative to subdivision control in effect at the time of the submission of the preliminary plan, provided that the definitive plan is duly submitted within seven months from the date on which the preliminary plan was submitted.

Rules and Regulations Governing Subdivision are Those in Effect when Definitive Plan Submitted

Rules and Regulations in Effect when Preliminary Plan Submitted

Provided that Definitive Plan Submitted within 7 Months

WAIVER OF COMPLIANCE

Section 81-R. A planning board may in any particular case, where such action is in the public interest and not inconsistent with the intent and purpose of the subdivision control law, waive strict compliance with its rules and regulations, and with the frontage or access requirements specified in said law, and may, where the ways are not otherwise deemed adequate, approve a plan on conditions limiting the lots upon which buildings may be erected and the number of buildings that may be erected on particular lots and the length of time for which particular buildings may be maintained without further consent by the planning board to the access provided. The planning board shall endorse such conditions on the plan to which they relate, or set them forth in a separate instrument attached thereto to which reference is made on such plan and which shall for the purpose of the subdivision control law be deemed to be a part of the plan.

Endorsement of Waiver of Conditions Must be Shown on Plan or Separate Instrument

PRELIMINARY PLAN

Section 81-S. Any person, before submitting his definitive plan for approval, may submit to the planning board and to the board of health, a preliminary plan, and shall give written notice to the clerk of such city or town by delivery or by registered mail, postage prepaid, that he has submitted such a plan. If the notice is given by delivery the city or town clerk shall, if requested, give a written receipt therefor. Within sixty days after submission of a preliminary plan each board shall notify by certified mail the applicant and the clerk of the city or town either that the plan has been approved, or that the plan has been approved with modifications suggested by the board or agreed upon by the person submitting the plan, or that the plan has been disapproved and in the

Submission of Preliminary Plan is at the Option of the Applicant and not the Planning Board

Approval or Disapproval Within 60 Days

Reasons if Disapproved

case of disapproval, the board shall state in detail its reasons therefor. The planning board shall notify the city or town clerk of its approval or disapproval, as the case may be. Except as is otherwise expressly provided, the provisions of the subdivision control law relating to a plan shall not be applicable to a preliminary plan, and no register of deeds shall record a preliminary plan.

Register of Deeds Not to Record

SUBMISSION OF PLANS

Section 81-T. Every person submitting a definitive plan of land to the planning board of a city or town for its approval or for a determination that approval is not required shall give written notice to the clerk of such city or town by delivery or by registered mail, postage prepaid, that he has submitted such a plan. If the notice is given by delivery the clerk shall, if requested, give a written receipt therefor to the person who delivered such notice. Such notice shall describe the land to which the plan related sufficiently for identification, and shall state the date when such plan was submitted and the name and address of the owner of such land; and the facts stated in such notice shall be taken by the city or town clerk as true, unless the contrary is made to appear. Before approval, modification and approval, or disapproval of the definitive plan is given, a public hearing shall be held by the planning board, notice of the time and place of which and of the subject matter, sufficient for identification, shall be given by the planning board at the expense of the applicant by advertisement in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication being not less than fourteen days before the day of such hearing or if there is no such newspaper in such city or town then by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of such hearing, and by mailing a copy of such advertisement to the applicant and to all owners of land abutting upon the land included in such plan as appearing on the most recent tax list.

Contents of Notice

Notice of Hearing for Definitive Plans

Posting

Copy of Notice to Applicant and Abutters

APPROVAL, MODIFICATION OR DISAPPROVAL OF DEFINITIVE PLANS

Section 81-U. When a definitive plan of a subdivision is submitted to the planning board, as provided in section eighty-one O, a copy thereof shall also be filed with the board of health or board or officer having like powers and duties. Such health board or officer shall report to the planning board in writing approval or disapproval of said plan, and in the event of disapproval shall make specific findings as to which, if any, of the lots shown on such plan cannot be used for building sites without injury to the public health, and include such specific findings and the reasons therefor in such report, and, where possible, shall make recommendations for the adjustment thereof, provided, however, if a municipal sewerage system will service the proposed subdivision, then failure of the board to make such a report within forty-five days after the

Copy of Plan to Board of Health

Board of Health has 45 Days to Report on Plan to be Serviced by Municipal Sewerage

plan is filed with their office shall be deemed approval by such board or officer. Such health board or officer shall send a copy of such report, if any, to the person who submitted said plan.

Approve
Modify and Approve
Disapprove
Revoke Disapproval if Plan Made to Conform
Notice of Action to Applicant

After the hearing required by section eighty-one T and after the report of said health board or officer as provided in the preceding paragraph or the lapse of forty-five days without such report, when the proposed subdivision will be serviced by a municipal sewerage system the planning board shall approve, or, if such plan does not comply with the subdivision control law or the rules and regulations of the planning board or the recommendations of the health board or officer, shall modify and approve or shall disapprove such plan. In the event of disapproval, the planning board shall state in detail wherein the plan does not conform to the rules and regulations of the planning board or to the recommendations of the health board or officer and shall revoke its disapproval and approve a plan which, as amended, conforms to such rules and regulations or recommendations. The planning board shall file a certificate of its action with the city or town clerk, a copy of which shall be recorded by him in a book kept for the purpose, and shall send notice of such action by registered mail, postage prepaid, to the applicant at his address stated on the application.

Conditional Approval on Matters Recommended by Board of Health

If the report of the board of health or board or officer having like powers and duties shall so require, the approval by the planning board shall be on condition that no building or structure shall be built or placed upon the areas designated without consent by such board of health or officer.

Failure to Act or Notify Clerk Within 60 Days Shall be Deemed Approved
Extension of Time Beyond 60 Days

Failure of the planning board either to take final action or to file with the city or town clerk a certificate of such action regarding a plan submitted by an applicant within sixty days after such submission, or such further time as may be agreed upon at the written request of the applicant, shall be deemed to be an approval thereof. Notice of such extension of time shall be filed forthwith by the planning board with the city or town clerk.

Before Endorsing Plan, Planning Board Shall Require Performance Guarantee

Before endorsement of its approval of a plan, a planning board shall require that the construction of ways and the installation of municipal services be secured by one, or in part by one and in part by the other, of the methods described in the following clauses (1) and (2), which method may be selected and from time to time varied by the applicant:

Bond or Securities

(1) By a proper bond or a deposit of money or negotiable securities, sufficient in the opinion of the planning board to secure performance of the construction of ways

and the installation of municipal services required for lots in the subdivision shown on the plan, and the planning board may require that the time be specified within which such construction and installation shall be completed.

By a Covenant

(2) By a covenant, executed and duly recorded by the owner of record, running with the land, whereby such ways and services shall be provided to serve any lot before such lot may be built upon or conveyed, other than by mortgage deed; provided, that a mortgagee who acquires title to the mortgaged premises by foreclosure or otherwise and any succeeding owner of such premises or part thereof may sell any such lot, subject to that portion of the covenant which provides that no lot shall be built upon until such ways and services have been provided to serve such lot; and provided, further, that nothing herein shall be deemed to prohibit a conveyance by a single deed, subject to such covenant, of either the entire parcel of land shown on the subdivision plan or of all lots not previously released by the planning board. A deed of any part of the subdivision in violation hereof shall be voidable by the grantee prior to the release of the covenant but not later than three years from the date of such deed.

Covenant and Board of Health Conditions Inscribed or Referred to on Plan

Any covenant given under the preceding paragraph and any condition required by the health board or officer shall be either inscribed on the plan or contained in a separate document, referred to on the plan.

Reduction of Bond or Securities

The penal sum of any such bond, or the amount of any deposit held under clause (1) above, may, from time to time, be reduced by the planning board and the obligations of the parties thereto released by said board in whole or in part.

Completion of Ways and Services

Upon the completion of the construction of ways and the installation of municipal services in accordance with the rules and regulations of the planning board, security for the performance of which was given by bond, deposit or covenant, or upon the performance of any covenant with respect to any lot, the applicant shall send by registered mail to the city or town clerk and the planning board a written statement that the said construction or installation in connection with which such bond, deposit or covenant has been given has been completed in accordance with said rules and regulations, such statement to contain the address of the applicant. If the planning board determines that said construction or installation has been completed, it shall release the interest of the town in such bond and return the bond or the deposit to the person who furnished the same, or release the covenant by appropriate instrument, duly acknowledged, which may be recorded.

Notice by Applicant to Planning Board and Clerk

If Ways and Services are Constructed, Planning Board Must Release Remainder of Guarantee

Planning Board Cannot Require Guarantee for Maintenance of Ways

Failure to Act on Guarantee Release Within 45 Days

If the board determines that said construction or installation has not been completed, it shall specify in a notice sent by registered mail to the applicant and to the clerk of the city or town the details wherein said construction or installation fails to comply with its rules and regulations and upon failure so to do within forty-five days after the receipt by said clerk of said statement all obligations under the bond shall cease and terminate by operation of law, any deposit shall be returned and any such covenant shall become void. In the event that said forty-five day period expires without such specification, or without the release and return of the bond or return of the deposit or release of the covenant as aforesaid, the said clerk shall issue a certificate to such effect, duly acknowledged, which may be recorded.

Release of Lots if Lender Guarantees Construction

Following the recording of a first mortgage covering the premises shown on the plan or a portion thereof given as security for advances to be made to the applicant by the lender, the planning board may, at its option, release lots from the operation of the covenant given pursuant to clause (2) above, without receipt of a bond or deposit of money upon delivery to the planning board of an agreement with the planning board, which agreement shall be executed by the applicant and the lender and shall provide for the retention by the lender of sufficient funds otherwise due the applicant to secure the construction of ways and the installation of municipal services. Said agreement shall also provide for a schedule of disbursements which may be made to the applicant upon completion of various stages of the work, and shall further provide that in the event the work is not completed within the time set forth by the applicant, any funds remaining undisbursed shall be available for completion.

Failure of Performance

Any such bond may be enforced and any such deposit may be applied by the planning board for the benefit of such city or town, as provided in section eighty-one Y, upon failure of the performance for which any such bond or deposit was given to the extent of the reasonable cost to such city or town of completing such construction and installation.

Restriction as to Building on Certain Areas Within the Subdivision for a Period of 3 Years

Before approval of a plan by a planning board, said board shall also in proper cases require the plan to show a park or parks suitably located for playground or recreation purposes or for providing light and air and not unreasonable in area in relation to the area of the land being subdivided and the prospective uses of such land, and if so determined said board shall by appropriate endorsement on the plan require that no building may be erected on such park or parks for a period of not more than three years without its approval.

APPROVED DEFINITIVE PLANS

Endorsement of Approval After 20 Days

Section 81-V. In case of approval of a plan by action of the planning board, after the expiration of twenty days without notice of appeal to the superior court, or if appeal has been taken after the entry of a final decree of the court sustaining the approval of such plan, the planning board shall cause to be made upon the plan a written endorsement of its approval. In case of the approval of a plan by reason of the failure of the planning board to act within the time prescribed, the city or town clerk shall, after the expiration of twenty days without notice of appeal to the superior court, or, if appeal has been taken, after receipt of certified records of the superior court indicating that such approval has become final, issue a certificate stating the date of the submission of the plan for approval, the fact that the planning board failed to take final action and that the approval resulting from such failure has become final. The plan bearing such endorsement or the plan and such certificate, as the case may be, shall be delivered by the planning board, or, in the case of the certificate, by the city or town clerk, to the person who submitted such plan. Except as provided in section eighty-one E, the existence of an official map in a city or town shall not affect the operation of the subdivision control law therein.

Effect of Existence of Official Map

MODIFICATION, AMENDMENT OR RESCISSION

All Provisions, so far as Apt, of Subdivision Control Law Applicable

Section 81-W. A planning board, on its own motion or on the petition of any person interested, shall have power to modify, amend or rescind its approval of a plan of a subdivision, or to require a change in a plan as a condition of its retaining the status of an approved plan. All of the provisions of the subdivision control law relating to the submission and approval of a plan of a subdivision shall, so far as apt, be applicable to the approval of the modification, amendment or rescission of such approval and to a plan which has been changed under this section.

Not to Affect Lots Sold, Without Consent of Owner

No modification, amendment or rescission of the approval of a plan of a subdivision or change in such plan shall affect the lots in such subdivision which have been sold or mortgaged in good faith and for a valuable consideration subsequent to the approval of the plan, or any rights appurtenant thereto, without the consent of the owner of such lots, and of the holder of the mortgage or mortgages, if any, thereon; provided, however, that nothing herein shall be deemed to prohibit such modification, amendment or rescission when there is a conveyance or a mortgage to a single grantee or mortgagee of either the entire parcel of land shown on the subdivision plan or of all the lots not previously released by the planning board.

Requirements for Modification, Amendment or Rescission to be Effective

So far as unregistered land is affected, no modification, amendment or rescission of the approval of a plan nor change in a plan under this section shall take effect until (1) the plan as originally approved, or a copy thereof, and a certified copy of the vote of the planning board making such modification, amendment, rescission or change, and any additional plan referred to in such vote, have been recorded, (2) an endorsement has been made on the plan originally approved as recorded referring to such vote and where it is recorded, and (3) such vote is indexed in the grantor index under the names of the owners of record of the land affected. So far as registered land is affected, no modification, amendment or rescission of the approval of a plan nor change in a plan under this section shall take effect, until such modification, amendment or change has been verified by the land court pursuant to chapter one hundred and eighty-five, and in case of rescission, or modification, amendment or change not so verified, until ordered by the court pursuant to section one hundred and fourteen of said chapter one hundred and eighty-five.

REQUIREMENTS FOR REGISTRATION OF PLAN

Section 81-X. No register of deeds shall record any plan showing a division of a tract of land into two or more lots, and ways, whether existing or proposed, providing access thereto, in a city or town in which the subdivision control law is in force unless (1) such plan bears an

Approval by Planning Board

endorsement of the planning board of such city or town that such plan has been approved by such planning board, and a certificate by the clerk of such city or town, is endorsed on the plan, or is separately recorded and referred to on said plan, that no notice of appeal was received during the twenty days next after receipt and recording of notice from the planning board of the approval of the plan, (or, if an appeal was taken, that a final decree has been entered by the court sustaining

Approval Not Required

the approval of the plan,) or (2) such plan bears an endorsement of the planning board that approval of such plan is not required, as provided in section eighty-one P, or (3) the plan is accompanied by a certificate of

Approval By Failure of Planning Board to Act

the clerk of such city or town that it is a plan which has been approved by reason of the failure of the planning board to act thereon within the time prescribed, as provided in sections eighty-one U and eighty-one V, or that it is a plan submitted pursuant to section eighty-one P and that it has been determined by failure of the planning board to act theron within the prescribed time that approval is not required, and a reference to the

Reference to Certificate

book and page where such certificate is recorded is made on said plan; and, unless, in case of plans approved,

Time Limit of Date of Endorsement

the endorsement or certificate is dated within six months of the date of the recording, or there is also endorsed thereon or recorded therewith and referred to thereon a

Certification That Plan Not Change

certificate of the planning board or city or town clerk, dated within thirty days of the recording, that the approval has not been modified, amended or rescinded, nor the plan changed. Such certificate shall upon application be made by the board or by the clerk unless the records of the board or clerk receiving the application show that there has been such modification, amendment, rescission or change.

Authorized Endorsement

The planning board of a city or town which has authorized any person, other than a majority of the board, to endorse on a plan the approval of the board or to make any other certificate under the subdivision control law,

Notice to Register and Recorder

shall transmit a written statement to the register of deeds and the recorder of the land court, signed by a majority of the board, giving the name of the person so authorized.

The contents of any such endorsement of the planning board or certificate by the clerk of the city or town shall be final and conclusive on all parties, subject to the provisions of section eighty-one W.

Public Record by Register and Recorder

Such register and recorder shall each keep in a place open for public inspection a book which shall be a public record in which the name of each city or town in which, according to notices sent him by the board having powers of subdivision control in such city or town the subdivision control law is or may be in effect, shall be separately indexed and in which shall be entered all notices from such board or the board of appeal of such city or town relating to subdivision control, including copies of the rules and regulations of such boards. Such register and recorder may each accept for record any plan of land, otherwise appropriate for record, in a city or town of which the board having powers of subdivision control has not sent him notice that the subdivision control law is in effect in such city or town, without requiring the approval of the planning board of such city or town, or a certificate that no approval is necessary.

Any Plan Accepted if Register and Recorder not Notified that Subdivision Control is in Effect

Register and Recorder Shall Accept Plans Where no New Lots or Ways are Shown

Notwithstanding the foregoing provisions of this section, the register of deeds shall accept for recording and the land court shall accept with a petition for registration or confirmation of title any plan bearing a certificate by a registered land surveyor that the property lines shown are the lines dividing existing ownerships, and the lines of streets and ways shown are those of public or private streets or ways already established, and that no new lines for division of existing ownership or for new ways are shown. The recording of any such plan shall not relieve any owner from compliance with the provisions of the subdivision control law or of any other applicable provision of law.

Statement to be Contained in Notice of Modification, Amendment or Rescission of Approved Plan

No register of deeds or recorder of the land court shall accept for record a notice of modification, amendment or rescission of approval of a plan of a subdivision unless such notice contains a statement by the planning board that such modification, amendment or rescission does not affect any lot or rights appurtenant thereto in such subdivision which lot was conveyed or mortgaged in good faith and for valuable consideration subsequent to the approval of the subdivision plan.

ENFORCEMENT BY PROHIBITION OF PUBLIC IMPROVEMENTS

Section 81-Y. In any city or town in which the subdivision control law is in effect, no public way shall be laid out, accepted or constructed, and no municipal service or improvement shall be constructed in a way within a subdivision, to serve the land therein, unless such way appears on a plan of such subdivision approved under such law, except by or in accordance with the affirmative vote of two thirds of those present and voting at a meeting of the city council or at a town meeting.

Enforcement by denial of building permits

In any city or town in which the subdivision control law is in effect, the board or officer, if any, having the power and duty to issue permits for the erection of buildings shall not issue any permit for the erection of a building until first satisfied that the lot on which the building is to be erected is not within a subdivision, or that a way furnishing the access to such lot as required by the subdivision control law is shown on a plan recorded or entitled to be recorded under section eighty-one X, and that any condition endorsed thereon limiting the right to erect or maintain buildings on such lot have been satisfied, or waived by the planning board, and in the event that the planning board has by rule or regulation required that not more than one building for dwelling purposes be erected or placed or converted to use as such on any lot without its consent, until satisfied that such consent has been obtained.

Building Permit by Planning Board if no Other Issuing Officer

In any city or town in which the subdivision control law is in effect in which there is no board or officer having the power and duty to issue permits for the erection of buildings, no building shall be erected within a subdivision without written permission from the planning board of the city or town. Such permission shall be given when it appears that the subdivision control law, so far as applicable, has been complied with.

Exception by Board of Appeals

If, however, the enforcement of the foregoing provisions of this paragraph would entail practical difficulty or unnecessary hardship, and if the circumstances of the case do not require that the building be related to a way shown on such plan, the board of appeal provided for in section eighty-one Z shall have power by vote of a majority of its members to issue a permit for the erection of such building, subject to the provisions of said section eighty-one Z and sections eighty-one AA and eighty-one BB.

Subdivision Without Approved Plan

Liability of Subdivider to Owners of Lots

Time Limit

Submission of Plan of Single Lot for Approval

If a subdivision of land has been made in a city or town while the subdivision control law is in effect in such city or town without a plan thereof recorded or entitled to be recorded under section eighty-one K, the person or persons executing and delivering the deed, mortgage or other instrument by which such subdivision was made shall be liable to each owner of such land or any part thereof who acquired title without notice or knowledge of such division having been made, for all damages sustained by such owner by reason of such failure to comply, in an action brought within one year after such delivery. Any person owning a lot in a subdivision, approval of which was required by the subdivision control law but not obtained, who did not make the subdivision and acquired title without notice or knowledge of the lack of such approval, may submit a plan of said lot and of the ways giving access thereto to the planning board, and such plan shall be acted upon in the same manner and with the same effect, so far as affects said lot and the rights of access appurtenant thereto, as a plan of a subdivision.

Enforcement of Statute by Court of Equity

The superior court for the county in which the land affected by any of the provisions of the subdivision control law lies shall have jurisdiction in equity on petition of the planning board of a city or town, or of ten taxable inhabitants thereof, to review any action of any municipal board or officer of such city or town in disregard of the provisions of this section and to annul and enjoin such action, to enjoin the erection of a building in violation of this section, and otherwise to enforce the provisions of the subdivision control law and any rules or regulations lawfully adopted and conditions on the approval of a plan lawfully imposed thereunder, and may restrain by injunction violations thereof or make such decrees as justice and equity may require. No proceeding under this paragraph shall be instituted more than one year after the act or failure to act upon which such petition is based.

BOARD OF APPEALS

Building Permits Issued Under 81-Y

May be Existing Building or Zoning Board of Appeals

Appointment

Pending Provision

Section 81-Z. A city or town in which the subdivision control law is in effect shall, by ordinance or by-law, provide for a board of appeals, which shall have jurisdiction to issue a permit for the erection of a building under section eighty-one Y. Such board of appeals may be the existing board of appeals under the local building or zoning ordinance or by-law; provided, that if the board of appeals under the local zoning ordinance or by-law in any city or town is also the planning board in such city or town, it shall not act as a board of appeals under the subdivision control law. The mayor or selectmen shall appoint the members of the board of appeals within three months of the adoption of the ordinance or by-law. Pending appointment of the members of the board of appeals the city council or selectmen shall act as a board of appeals. Any

Three or More Members

Term of Office

board of appeals newly established hereunder shall consist of at least three members, who shall be appointed in a city by the mayor subject to the confirmation of the city council, or in a town by the selectmen, for terms of such length and so arranged that the term of one member shall expire each year; and said board shall elect annually a chairman from its own members and a clerk. Any board so newly established may also act as a board of appeals under the local building or zoning ordinance or by-law, or under both.

Removal

Vacancies

Associate Members

Any member of such a board of appeals may be removed for cause by the appointing authority upon written charges and after a public hearing. Vacancies shall be filled for unexpired terms in the same manner as in the case of original appointments. Ordinances or by-laws adopted hereunder may provide for the appointment in like manner of associate members of the board of appeals; and the chairman of the board may designate any such associate member to sit on the board in case of the absence, inability to act or interest on the part of a member thereof, or in the event of a vacancy on said board may designate any such associate member to sit as a member of the board until said vacancy is filled in the manner provided in this section.

BOARD OF APPEALS' POWERS AND DUTIES

Rules

Meetings

Oaths, Witnesses

Public Hearings
Detailed Records
Vote

Reasons for Decisions

Public Records

Section 81-AA. The board of appeals appointed under section eighty-one Z shall adopt rules not inconsistent with this section and sections eighty-one Y and eighty-one Z, for conducting its business and otherwise carrying out the purposes of said sections. Meetings of the board shall be held at the call of the chairman and also when called in such other manner as it shall determine in its rules. Such chairman, or, in his absence, the acting chairman, may administer oaths, summon witnesses and call for the production of papers. All hearings of the board shall be open to the public. The board shall cause to be made a detailed record of its proceedings, showing the vote of each member upon each question, or, if any member is absent or fails to vote, indicating such fact, and setting forth clearly the reason or reasons for its decisions, and of its other official acts, copies of all of which shall be immediately filed in the office of the city or town clerk and shall be public records.

Hearings

Notice

Before taking any action under section eighty-one Y, the board of appeals shall hold a hearing at which parties in interest shall have an opportunity to be heard, in person or by agent or attorney. Notice of the time and place of such hearing and of the subject matter, sufficient for identification, shall be published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the hearing or if there is no such newspaper in such city or town

Board May Impose Reasonable Requirements

then by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of such hearing. The board may require the appellant to pay the expense of giving such notice. The board may, as a condition of granting a permit under section eighty-one Y, impose reasonable requirements designed to promote the health, convenience, safety and general welfare of the community and to benefit the city or town.

APPEAL TO SUPERIOR COURT

Section 81-BB. Any person, whether or not a party to the proceedings, aggrieved by a decision of a board of appeals under section eighty-one Y, or by any decision of a planning board concerning a plan of a subdivision, or by the failure of such a board to take final action concerning such a plan within the required time, or any municipal officer or board, may appeal to the superior court sitting in equity for the county in which the land concerned is situated; provided, that such appeal is entered within twenty days after such decision has been recorded in the office of the city or town clerk or within twenty days after the expiration of the required time as aforesaid, as the case may be, and notice of such appeal is given to such city or town clerk so as to be received within such twenty days. The court shall hear all pertinent evidence and determine the facts, and upon the facts so determined, shall annul such decision if found to exceed the authority of such board, or make such other decree as justice and equity may require. The foregoing remedy shall be exclusive, but the parties shall have all rights of appeal and exceptions as in other equity cases.

Appeal to be Entered Within 20 Days After Decision

Notice to Clerk of Appeal

Decree by Court

Legal Counsel

A city or town may provide any municipal officer or board with legal counsel for appealing, as provided in this section, a decision of a board of appeals or a planning board and for taking such other subsequent action as parties in other equity cases are permitted to take.

Costs

Costs shall not be allowed against the planning board or board of appeals unless it shall appear that such board acted with gross negligence or in bad faith.

Precedence of Action

All issues in any proceeding under this section may be advanced for speedy trial over other civil actions and proceedings.

MONUMENTS AND MARKS, ENTRY ON PRIVATE LAND

Section 81-CC. Planning boards and their officers and agents may, as far as they deem it necessary in carrying out the subdivision control law, enter upon any lands and there make examinations and surveys and place and maintain monuments and marks.

POWERS OF LEGISLATIVE BODY NOT ABRIDGED
In Regard to Public Ways
Taking of Land Not Authorized

Damages

Section 81-DD. The subdivision control law shall not abridge the powers of the city council, of the selectmen, or any other municipal officer, in regard to public ways in any manner except as herein provided, and shall not authorize the taking of land nor authorize a city or town to lay out or construct any way which may be indicated on any plan of a subdivision until such way has been laid out as a public way in the manner prescribed by law; nor shall action under such law render a city or town liable for damages; provided, however, any person injured in his property by reason of the modification, amendment or rescission of the approval of a plan under section eighty-one W without his consent in writing, or by entry of his land not within the limits of a subdivision as shown on a preliminary or definitive plan submitted by him for approval, may recover the damages so caused under chapter seventy-nine. The modification, amendment or rescission of the approval of a plan shall not entitle any person to damages, unless and to the extent that he shall have changed his position or made expenditures in reliance upon such approval. No damages shall be awarded for the modification, amendment or rescision of the approval of a plan obtained as a result of material misrepresentation of facts, whether willful or otherwise, by the persons submitting the plan.

STATEMENT THAT SUBDIVISION CONTROL LAW IN EFFECT TO REGISTER OF DEEDS AND TO RECORDER OF LAND COURT

Vote

Date of Action

Recording of Statement by Register and Recorder

Subdivision Control Law Suspended if Register and Recorder Not Notified

Section 81-EE. Every board having on the first day of January, nineteen hundred and fifty-four, powers of subdivision control shall, within sixty days thereafter transmit to the register of deeds and the recorder of the land court a statement stating that in the opinion of such board the subdivision control law is in effect in such city or town, including a copy certified by the clerk of such city or town of the vote of the city council or of the town meeting under which the subdivision control law in the opinion of such board went into effect, together with the date thereof, or a reference to any special statute under which subdivision control was established, in such city or town. The register of deeds and the recorder of the land court shall enter such statement in the book which he is required to keep under section eighty-one X. Unless such statement is transmitted as herein provided within sixty days after said date, or the clerk of such city or town has previously notified the register of deeds and recorder of the land court of the establishment of a planning board under the provisions of law in effect prior to said date, and included in his notice a statement of the date of such establishment, the operation of the subdivision control law in and in respect to such city or town shall be suspended until the clerk of such city or town has notified the register of deeds and recorder of the land court that the subdivision control law is in effect in his city or town in the manner

provided in section eighty-one N. The register of deeds and the recorder of the land court shall each enter such notice in his records in the manner provided in section eighty-one X. Any planning board having powers of subdivision control on the first day of January, nineteen hundred and fifty-four, shall, within sixty days thereafter, transmit to the register of deeds and recorder of the land court a certified copy of its rules and regulations relating to subdivision control, which shall be kept by him in the same manner as copies of rules and regulations thereafter adopted, and unless such copy is so transmitted, the operation of the subdivision control law in and with respect to such city or town shall be suspended until the board so transmits such copy.

Planning Board Must Transmit Certified Copy of Rules and Regulations to Register and Recorder

EFFECT OF PRIOR RECORDING OF SUBDIVISION PLAN OF UNREGISTERED LAND

Section 81-FF. So far as land which has not been registered in the land court is affected by the subdivision control law, recording of the plan of a subdivision in the registry of deeds before the subdivision control law was in effect in the city or town in which the subdivision was located shall not exempt the land within such subdivision from the operation of said law except with respect to lots which had been sold and were held in ownership separate from that of the remainder of the subdivision when said law went into effect in such city or town, and to rights of way and other easements appurtenant to such lots; and plans of subdivisions which were recorded in the registry of deeds and subdivisions made without the recording of a plan after said law had gone into effect in such city or town and before February first, nineteen hundred and fifty-two, without receiving the approval of the planning board of such city or town, shall have the same validity and effect as if the subdivision control law became effective in such city or town on February first, nineteen hundred and fifty-two, as above provided.

Prior Recording Does Not Exempt Land Except Lots Sold

Recording After Effective Date and Before February 1, 1952, Does Not Exempt Land Except Lots Sold

Effect of Prior Recording of Plan of Registered (or Confirmed) Land

So far as land which has been registered in the land court is affected by said law, any plan of a subdivision which has been registered or confirmed by said court before February first, nineteen hundred and fifty-two, whether the subdivision control law was in effect in the city or town in which the subdivision was located or not, and whether the plan of the subdivision was approved by the planning board or not, shall have the same validity in all respects as if said plan had been so approved, but the land court shall not register or confirm a plan of a subdivision in a city or town in which the subdivision control law is in effect which has been filed on or after February first, nineteen hundred and fifty-two, unless it has first verified the fact that the plan

Plans Registered or Confirmed Before February 1, 1952, have same Validity as Approved Plans

Land Court Jurisdiction

filed with it has been approved by the planning board, or would otherwise be entitled if it had related to unregistered land, to be recorded in the registry of deeds. The land court shall have jurisdiction in so far as affects land registered or to be registered or confirmed under chapter one hundred and eighty-five, to determine whether the subdivision control law has been complied with, and shall verify before registering or confirming any plan of land in any city or town in which the subdivision control law is in effect, that the plan filed with it is entitled to be recorded in accordance with the subdivision control law, and every plan heretofore or hereafter registered or confirmed by the land court pursuant to said chapter one hundred and eighty-five shall for the purposes of the subdivision control law be deemed to be, and shall be invested with all the rights and privileges of, a plan approved pursuant to said law. In case of conditions imposed pursuant to section eighty-one R or eighty-one U of said law, and set forth or referred to by endorsement on the plan filed with it, the land court shall cause said conditions to be set forth or referred to on the plan prepared by it therefrom for registration or confirmation, or in the decree of registration or confirmation or certificate of title issued for the land shown thereon.

POWERS OF PLANNING BOARD ESTABLISHED UNDER PRIOR LAW

Section 81-GG. Any planning board having powers of subdivision control under corresponding provisions of earlier laws shall have all of the powers and be subject to all of the duties of a planning board with respect to subdivision control under sections eighty-one K to eighty-one FF, inclusive, without any further action by such city or town.

Severability Provisions

If any provision of sections eighty-one K to eighty-one GG, inclusive, known as the subdivision control law, or in the administration thereof, shall be held to be unconstitutional, it shall not affect any other provision of said sections or the administration thereof.